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TTY: Dial 711 (Maine Relay)

DATE: June 25, 2019

TO: Interested Parties

FROM: Michelle Probert, Director, MaineCare Services

SUBJECT: Emergency Adoption: 10-144, C.M.R. ch. 101, MaineCare Benefits Manual, Chapter II, Section 28, Rehabilitative and Community Support Services for Children with Cognitive Impairments and Functional Limitations.

On November 8, 2018, the Department adopted the emergency major substantive rule for Ch. III, Sec. 28 (Allowances for Rehabilitative and Community Support Services for Children with Cognitive Impairments and Functional Limitations). The emergency major substantive rulemaking was done to comply with Public Law 2017, Ch. 460 (“the Act”) which directed the Department to amend reimbursement rates to Section 28 providers to reflect final rates modeled in the April 2017 Burns report: Rate Study for Behavioral Health and Targeted Case Management Services: Final Proposed Rates for Formal Rulemaking, and also to increase the rate of reimbursement for all services by two percent. The legislation was enacted as an emergency, and directed the Department to make the rate increases effective July 1, 2018. Pursuant to the emergency major substantive rule, in order to comport with federal Medicaid law, the rate increases were made with an August 1, 2018 effective date.

The November 8, 2018 emergency major substantive rule also added a new procedure code for Board Certified Behavior Analyst (BCBA) services (Procedure Code G9007), pursuant to the Act, which required the Department to “establish new reimbursement rates” in accordance with the 2017 Burns rate study.

The Department proposed rules for Ch. III, Section 28, in accordance with 5 M.R.S. § 8072(1), to be provisionally adopted by the Department, pending legislative approval. The Department received comments during that rulemaking requesting clarification on the services that would be eligible for the August 1, 2018 BCBA services rate.

Therefore, the Department has determined that emergency rulemaking is required in order to clarify the services that are eligible for the new BCBA service rate. Pursuant to 5 M.R.S. § 8054, the Department finds that immediate adoption of the Ch. II, Section 28 rate is necessary to avoid an immediate threat to public health, safety or general welfare, since the Legislature determined through the Act that “these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety.” P.L. 2017, Ch. 460.

This emergency rulemaking provides for a new provision in the rule identifying BCBA services in the Covered Services section of the rule. In addition, the emergency rule identifies the requirements for BCBA providers, consistent with requirements set forth by the Behavioral Analyst Certification Board. These standards are in effect on the effective date of this emergency rule.

BCBA services rendered between August 1, 2018, the effective date of the November 8, 2018, Ch. III, Section 28, emergency major substantive rule, and the effective date of this emergency rule, will be reimbursed in accordance with the emergency major substantive rule BCBA rate, and the Ch. II rule in effect at that time.

Rules and related rulemaking documents may be reviewed at and printed from MaineCare Services website at <http://www.maine.gov/dhhs/oms/rules/index.shtml> or, for a fee, interested parties may request a paper copy of rules by calling 207-624-4050. For those who are deaf or hard of hearing and have a TTY machine, the TTY number is 711.

A concise summary of the adopted rule is provided in the Notice of Agency Rulemaking Proposal, which can be found at <http://www.maine.gov/sos/cec/rules/notices.html>. This notice also provides information regarding the rulemaking process.

If you have any questions regarding the policy, please contact Provider Services at 1-866-690-5585 or TTY users call Maine relay 711.

## Notice of Agency Rule-making Adoption

**AGENCY:** Department of Health and Human Services, Office of MaineCare Services

**CHAPTER NUMBER AND TITLE:** 10-144 C.M.R., Chapter 101, Section 28, Chapter II, Rehabilitative and Community Support Services for Children with Cognitive Impairments and Functional Limitations

**ADOPTED RULE NUMBER:**

**CONCISE SUMMARY:**

On November 8, 2018, the Department adopted the emergency major substantive rule for Ch. III, Sec. 28 (Allowances for Rehabilitative and Community Support Services for Children with Cognitive Impairments and Functional Limitations). The emergency major substantive rulemaking was done to comply with Public Law 2017, Ch. 460 (“the Act”) which directed the Department to amend reimbursement rates to Section 28 providers to reflect final rates modeled in the April 2017 Burns report: Rate Study for Behavioral Health and Targeted Case Management Services: Final Proposed Rates for Formal Rulemaking, and also to increase the rate of reimbursement for all services by two percent. The legislation was enacted as an emergency, and directed the Department to make the rate increases effective July 1, 2018. Pursuant to the emergency major substantive rule, in order to comport with federal Medicaid law, the rate increases were made with an August 1, 2018 effective date.

The November 8, 2018 emergency major substantive rule also added a new procedure code for Board Certified Behavior Analyst (BCBA) services (Procedure Code G9007), pursuant to the Act, which required the Department to “establish new reimbursement rates” in accordance with the 2017 Burns rate study.

The Department proposed rules for Ch. III, Section 28, in accordance with 5 M.R.S. § 8072(1), to be provisionally adopted by the Department, pending legislative approval. The Department received comments during that rulemaking requesting clarification on the services that would be eligible for the August 1, 2018 BCBA services rate.

Therefore, the Department has determined that emergency rulemaking is required in order to clarify the services that are eligible for the new BCBA service rate. Pursuant to 5 M.R.S. § 8054, the Department finds that immediate adoption of the Ch. II, Section 28 rate is necessary to avoid an immediate threat to public health, safety or general welfare, since the Legislature determined through the Act that “these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety.” P.L. 2017, Ch. 460.

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BCBA services rendered between August 1, 2018, the effective date of the November 8, 2018, Ch. III, Section 28, emergency major substantive rule, and the effective date of this emergency rule, will be reimbursed in accordance with the emergency major substantive rule BCBA rate, and the Ch. II rule in effect at that time.

<http://www.maine.gov/dhhs/oms/rules/index.shtml> for rules and related rulemaking documents.

EFFECTIVE DATE:

June 25, 2019

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28.01 **DEFINITIONS**

- 28.01-1 **Authorized Agent** shall mean the organization authorized by the Department to perform specified functions pursuant to a signed contract or other approved signed agreement.
- 28.01-2 **Central Enrollment** is a process of determining eligibility for treatment services. The goals of central enrollment are to determine a member's eligibility for treatment; facilitate referrals to appropriate service providers; expedite delivery of service to members in need of treatment; reliably track the service status of members enrolled in the system; and gather data that will inform DHHS of resource development needs.
- 28.01-3 **Child** is a person between the ages of birth through twenty (20) years of age. Children aged eighteen (18) through twenty (20) years of age may choose to receive children's or adult services, whichever best meets their individual needs.
- 28.01-4 **Comprehensive Assessment** is used to identify strengths and needs of the member and family and develop an Individual Treatment Plan. The comprehensive assessment process determines the intensity and frequency of medically necessary services and includes utilization of instruments as may be approved or required by DHHS.
- 28.01-5 **Crisis Plan/Safety Plan** is a plan that must address the safety of the member and others surrounding a member experiencing a crisis.
- 28.01-6 **Discharge plan** is a plan incorporated in the Individualized Treatment Plan that describes the member's planned exit from treatment. The plan must identify discharge criteria, documentation of any after care or support services recommended at the time of discharge, and must be minimally reviewed by the treatment team every ninety (90) days.
- 28.01-7 **Family** means the primary caregiver(s) in a member's daily life, and may include a biological or adoptive parent, foster parent, legal guardian or designee, sibling, stepparent, stepbrother or stepsister, brother-in-law, sister-in-law, grandparent, spouse of grandparent of grandchild, a person who provides kinship care, or any person sharing a common residence as part of a single family unit.
- 28.01-8 **Family Participation** may include being a member of the treatment team, participation in the assessment process, and helping to develop the Individual Treatment Plan (ITP). Family participation may also mean participating in treatment, modeling, and reinforcing skills learned in the course of treatment.

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28.01 **DEFINITIONS** (*continued*)

- 28.01-9 **Individual Treatment Plan (ITP)** is the plan of care developed by the treatment team and includes the member, if appropriate, the parent or guardian, the provider and natural supports, and is based on a comprehensive assessment and a diagnostic evaluation of the member. The Individual Treatment Plan shall include a Crisis/Safety Plan and a Discharge Plan, along with other elements of the plan of care. The Individual Treatment Plan describes the medically necessary treatment the member will receive.
- 28.01-10 **Natural Supports** include the relatives, friends, neighbors, and community resources that a family goes to for support. They may participate in the treatment team, but are not MaineCare reimbursable.
- 28.01-11 **Parent or Guardian** may be the biological, adoptive, or legal guardian. They must be a participant in the treatment team, but are not MaineCare reimbursable. They must sign the ITP.
- 28.01-12 **Prior Authorization** is the process of obtaining approval prior to the start of the service. All services in this Section require prior authorization, except that for the time period 7/1/2010 through 10/31/2010, prior authorization is not required. The provider will receive a prior authorization letter containing an authorization number and a description of the type, duration and costs of the services authorized. The provider shall retain this letter in the case record for audit purposes. The provider is responsible for providing services in accordance with the prior authorization letter. The prior authorization number is required on the CMS 1500 claim form. All extensions of services beyond the original authorization must be prior authorized by this same procedure.
- 28.01-13 **School** is a program that has been approved by the Department of Education, as either a Special Purpose Private School or a Regular Education Public School Program under 05-071 C.M.R. ch 101 §XII and 20-A MRSA §7204 (4) , 7252-A and 7253, and 05-071 C.M.R. ch 101, §12, or a program operated by the Child Development Services System 20-A MRSA §7001(1-A).
- 28.01-14 **Specialized Services** are medically necessary treatment services that utilize the process of systematically applying interventions based upon empirically derived principles of behavior to improve socially significant behaviors to a measurable degree, and to demonstrate that interventions employed are responsible for improvements in behavior. Assessment includes systematic information gathering regarding factors that influence occurrence of a behavior including interview, direct observation and experimental analysis.



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28.01 **DEFINITIONS** (continued)

28.01-15 **Treatment Team** is the group of people responsible for developing and reviewing a member's ITP. The team may include the member, to the extent possible, and must include the parent/guardian and provider. The member's family, case manager, any other professionals, and those who provide natural supports may also be included.

28.01-16 **Utilization Review** is a formal assessment by the Department of the medical necessity, efficacy and appropriateness of services and treatment plans minimally on an annual basis.

28.02 **ELIGIBILITY FOR SERVICE**

To be found eligible for Rehabilitative and Community Support Services For Children With Cognitive Impairments and Functional Limitations, a member must be under twenty-one years of age and meet all of the following criteria:

- A. Individuals must meet the financial eligibility criteria as set forth in the *MaineCare Eligibility Manual* (MEM).
- B. All services must be medically necessary pursuant to Chapter I, Section 1.02-4.D. of the *MaineCare Benefits Manual* and identified in the ITP.
- C. **Specific Eligibility Criteria**
  - 1. The member must have a completed multi-axial evaluation with an Axis I or Axis II behavioral health diagnosis using the most recent *Diagnostic and Statistical Manual of Mental Health Disorder* or an Axis I diagnosis from the most recent *Diagnostic Classification of Mental Health or Developmental Disorders of Infancy and Early Childhood Manual* (DC-03); AND
    - a. Have a functional assessment administered within one (1) year prior to the date of the referral documenting functional impairment measured as two (2) standard deviations below the mean on the composite score or have one point five (1.5) standard deviations below the mean on the composite score and two standard deviations below the mean in the communication or social domain sub score of the most current version of the Vineland Adaptive Behavior <http://psychcorp.pearsonassessments.com/HAIWEB/Cultures/en-us/Productdetail.htm?Pid=Vineland-II> ,or the Adaptive Behavioral Assessment Scales <http://www.pearsonassessments.com/HAIWEB/Cultures/en-us/Productdetail.htm?Pid=015-8004-507&Mode=summary>, or

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28.02 **ELIGIBILITY FOR SERVICE** (continued)

- b. have a functional assessment administered within one (1) year prior to the date of the referral documenting functional impairment measured as two (2) standard deviations below the mean on the Developmental Quotient of the Battelle Developmental Inventory or have 1.5 standard deviations below the mean on the Developmental Quotient and two (2) standard deviations below the mean on in the Personal-Social, Adaptive, Communication, or Cognitive subscales.  
<http://www.riverpub.com/products/bdi2/index.html>, or
  - c. have a functional assessment administered within one (1) year prior to the date of the referral documenting functional impairment measured as two (2) standard deviations below the mean on the composite Adaptive Score of the Bayley Scales of Infant and Toddler Development or have 1.5 standard deviations below the mean on the composite Adaptive Score and two (2) standard deviations below the mean on the Social or Communication domain or Cognitive, Language or Social Emotional Subscale.  
<http://www.pearsonassessments.com/haiweb/cultures/en-us/productdetail.htm?pid=015-8027-264> or
  - d. other functionally equivalent tools approved by DHHS and other clinical assessment information obtained from the member and family;  
OR
2. A member aged birth through five (5) years, who has a diagnosis from a physician (including psychiatrist) of a specific congenital or acquired condition, and a written assessment by a physician (including psychiatrist) that there is a significant probability that because of that condition, the member will meet the functional impairment criteria in (C)(1) above, later in life if medically necessary services and supports are not provided to the member;
  3. Family Participation is required in treatment services to the greatest degree possible given the individual needs as well as family circumstances.

28.03 **DURATION AND INTENSITY OF SERVICES**

Eligible MaineCare members are entitled to receive up to the approved number of hours of services under this Section as are medically necessary, approved by DHHS or its Authorized Agent, and described in an approved treatment plan. DHHS or its Authorized Agent will review member records and the proposed treatment plan in approving services.

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28.04 **COVERED SERVICES**

A covered service is a service provided to a member for which payment may be made under the MaineCare Program, and through contract with DHHS. Assessment and treatment are covered services when provided to an eligible member by an approved staff so long as the services are medically necessary as defined in this section. Treatment is provided in the home and/or community in either individual or group settings and requires prior authorization and utilization review.

- 28.04-1 **Treatment Services for Children with Cognitive Impairments and Functional Limitations** are medically necessary treatment services for members under the age of twenty one (21). Treatment services are designed to retain or improve functional abilities which have been negatively impacted by the effects of cognitive or functional impairment and are focused on behavior modification and management, social development, and acquisition and retention of developmentally appropriate skills. Services include problem solving activities in order to help the member develop and maintain skills and abilities necessary to manage his or her behavioral health treatment needs, learning the social skills and behaviors necessary to live with and interact with other community members and independently, and to build or maintain satisfactory relationships with peers or adults, learning the skills that will improve a member's self awareness, environmental awareness, social appropriateness and support social integration, and learning awareness of and appropriate use of community services and resources.
- 28.04-2 **Specialized Services for Children with Cognitive Impairments and Functional Limitations** are medically necessary, evidence based treatment services for members under the age of twenty one (21), that utilize behavioral interventions designed to improve socially significant behaviors and developmentally appropriate skills to a measurable degree. Services include problem solving activities in order to help the member develop and maintain skills and abilities necessary to manage his or her behavioral health treatment needs, learning the social skills and behaviors necessary to live with and interact with other community members and independently, and to build or maintain satisfactory relationships with peers or adults, learning the skills that will improve a member's self awareness, environmental awareness, social appropriateness and support social integration, and learning awareness of and appropriate use of community services and resources.

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28.04 **COVERED SERVICES** (continued)

**\*The Department is seeking, and anticipates receiving, approval from CMS for this Section.  
Pending approval, these changes will be effective.**

28.04-3 **\*BCBA Services** are services performed by a BCBA in connection with Specialized Services for Children with Cognitive Impairments and Functional Limitations (Specialized Services). The BCBA is responsible for the supervision and delivery of the Specialized Services. BCBA services are defined as the following:

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1. Conduct Functional Behavioral Assessments (FBA). FBAs are a process of gathering information from multiple sources to hypothesize and understand what reliably predicts and maintains a problem behavior. The FBA evaluates behavior to analyze the antecedent and consequence as a reinforcement of a problem behavior. Behaviors are defined in measurable terms. The FBA uses a validated assessment tool or instrument which may also include interview, direct and/or indirect observation in the member's natural environment, functional analysis, preference assessment, assessment of reinforcement effectiveness, data collection, and reporting. An initial FBA is limited to fifteen (15) hours. One update is allowed per year, limited to ten (10) hours;
2. Conduct Individual Treatment Plan development, positive behavior support planning, and periodic reviews/revision of the ITP and positive behavior support plan. Planning services are limited to four (4) hours for developing the initial treatment plan, and up to two (2) hours per quarter to review, and update as necessary, the treatment plan;
3. Conduct summary and analysis of data on Member progress, and review data trends with staff to refine Member treatment. Summary and data analysis services are limited to one (1) hour per Member per month;
4. Conduct evidence-based practices congruent with Specialized Services with Members in accordance with the Member's Individualized Treatment Plan. Specialized Services are limited to two (2) hours per Member per month.
5. Conduct coordination of Member care with other providers. Coordination Services are limited to two (2) hours per Member per month;

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28.04 **COVERED SERVICES** (continued)

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6. Conduct parent training on behavioral principles and interventions specific to the Member. Parent training services are limited to two (2) hours per Member per month;
7. Conduct monthly Member treatment team meetings. There is a limit of one (1) hour per Member per month for monthly Member treatment team meetings;

28.05 **MEMBER RECORDS**

28.05-1 **Written Record**

The provider must keep a specific written record for each member, which must include:

- A. Member's name, address, birth date, and MaineCare ID number;
- B. A written copy of the member's comprehensive assessment;
- C. Individual Treatment plan (ITP), including the strengths and needs identified in the planning process;
- D. Written, signed, credentialed with licensure or certification, if applicable, and dated progress notes, kept in the member's records;
- E. DHHS, or its authorized agent, must approve changes regarding intensity and duration of treatment services provided. The Provider must document the approval of the changes in the ITP and in the member's record.

28.05-2 **Comprehensive Assessment**

- A. A supervisor must complete a comprehensive assessment within thirty (30) days of initiation of services and must be included in the members record. The comprehensive assessment process must include a direct encounter with the member, if appropriate, and parents or guardians.

The comprehensive assessment must be updated as needed, annually at a minimum.

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**28.05 MEMBER'S RECORDS** (continued)

- B. The comprehensive assessment must contain documentation of the following:
1. the member's identifying information, including the reason for referral,
  2. family history relevant to family functioning including, but not limited to, concerns regarding mental health, developmental disabilities, substance abuse, domestic violence and trauma,
  3. the member's developmental history, if known, educational history and current status, and transition planning if age appropriate, and
  4. identification of the member's strengths and needs regarding functioning in the areas of behavior, social skills, activities of daily living, communication, cultural issues and need for accommodation and for members fourteen (14) years of age or older, independent living skills.
- C. The assessment must be summarized, signed, credentialed with licensure or certification, if applicable, and dated by the staff conducting the assessment, the parent or guardian and the member, if appropriate, and include the source and date of the diagnosis.
- D. The assessment must contain documentation if information is missing and the reason the information cannot be obtained.

**28.05-3 Individual Treatment Plan (ITP)**

- A. Within thirty (30) days of initiation of services, the treatment team must develop an ITP. The ITP is based on the comprehensive assessment and is appropriate to the developmental level of the member.
- B. The ITP must contain the following:
1. The member's diagnosis and reason for receiving the service.
  2. Specific medically necessary treatment services to be provided with methods, frequency and duration of services and designation of who will provide the service.
  3. Objectives with target dates that allow for measurement of progress toward meeting identified developmentally appropriate goals.

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**28.05 MEMBER'S RECORDS** (continued)

4. Special accommodations needed to address barriers to provide the service.
5. The parent or guardian and the member, if applicable, must sign and date the ITP.
6. Be reviewed every ninety (90) days by the treatment team.
7. If indicated, the member's needs may be reassessed and the ITP revised.
8. The provider will provide the member with a copy of the initial and reviewed ITP within ten (10) days of signing.
9. Discharge plan must:
  - a. identify discharge criteria that are related to the goals and objectives described in the ITP; and
  - b. identify the individuals responsible for implementing the plan; and
  - c. identify natural and other supports necessary for the member and family to maintain the safety and well-being of the member, as well as sustain progress made during the course of treatment; and
  - d. Be reviewed by the treatment team every ninety (90) days.
10. Crisis/Safety Plan, as applicable  
The plan must:
  - a. Identify the potential triggers which may result in a crisis;
  - b. Identify the strategies and techniques that may be utilized to assist the member who is experiencing a crisis and stabilize the situation;
  - c. Identify the individuals responsible for the implementation of the plan including any individuals identified by the member (or parents or guardian, as appropriate) as significant to the member's stability and well-being.

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**28.05 MEMBER'S RECORDS** (continued)

28.05-4 **Progress Notes**

1. Providers must maintain written progress notes for all treatment services, in chronological order.
2. All entries must include the treatment service provided, the provider's signature, the date on which the service was provided, the duration of the service, and the progress the member is making toward attaining the goals or outcomes identified in the ITP.
3. For in-home services, the provider must ask the member, or an adult responsible for the member, to sign off on the progress note documenting the date, time of arrival, and time of departure of the provider.

**28.06 LIMITATIONS**

The following limitations apply to reimbursement of services:

28.06-1 **Services for Children With Cognitive Impairments and Functional Limitations**

MaineCare will limit reimbursement for services under this Section to those covered services documented and approved in the treatment plan that are medically necessary and developmentally appropriate. Reimbursement is also contingent upon the provider's adherence to any applicable licensing standards and contractual agreements set forth by DHHS or its Authorized Agent. MaineCare will not reimburse for services provided during the child's regular sleeping hours. All Section 28 Services must meet requirements of central enrollment and will be subject to prior authorization and ongoing utilization review by the Department of Health and Human Services or Authorized Agent.

28.06-2 **Non-Duplication of Services**

Services as defined under this Section are not covered if the member is receiving comparable or duplicative services under this or another Section of the *MaineCare Benefits Manual*. A member may not receive services if they are in a residential treatment facility or if they are receiving services in an institution, including, but not limited to Section 45, "Hospital Services", Section 46, "Psychiatric Facility Services", Section 50, "ICF-MR", Section 67, "Nursing Facilities" and Section 97, Appendix D, "Private Non-Medical Institutions" except that this service may be provided while a member is receiving Treatment Foster Care provided by a Private Non-Medical Institution.



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Effective 6/25/19

**EMERGENCY RULE**

28.06 **LIMITATIONS** (continued)

28.06-3 **Group Treatment**

Reimbursement for group treatment must be prior authorized. Group Treatment is limited to no more than eight (8) members in a group. When group treatment is provided to a group of more than four (4) members it must be provided by at least two (2) qualified staff at a time.

When group treatment is provided by more than one qualified staff at the same time, they can bill as follows:

- a. One qualified staff seeks reimbursement for the provision of services to the total number of members in the group; or
- b. Each qualified staff bills for services provided to a portion of the total number of members in the group. Each qualified staff may bill only for the members for whom the other staff has not billed. The total amount submitted by both staff for MaineCare reimbursement must not exceed the total number of members in the group. For example, if there are eight (8) members in the group each staff may bill for the session, accounting for four (4) members each.

The staff billing for the member is responsible for maintaining all clinical records.

28.07 **NON-COVERED SERVICES**

Non-covered services are described in Chapter I of the *MaineCare Benefits Manual* (MBM). MaineCare does not cover services that are primarily academic, vocational, social, recreational, or custodial in nature.

28.08 **POLICIES AND PROCEDURES**

28.08-1 **Provider Agency Requirements**

All providers of services under this Section must be enrolled and approved as MaineCare providers by the MaineCare Services, and all Providers are subject to all requirements of the *MaineCare Benefits Manual*, Chapter I and this Section. In addition, non-School Providers must be approved by the Office of Child and Family Services (OCFS), Children's Behavioral Health Services (CBHS).

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**28.08 POLICIES AND PROCEDURES** (continued)

- A. Rehabilitative and Community Support Services for Children with Cognitive Impairments And Functional Limitations Provider Contract

All non-School providers must have a current contract with DHHS. The content of this contract must stipulate that the provider will Comply with Rider A specifications including: 1) reporting requirements; 2) service specifications/performance guidelines; and 3) process objectives.

- B. Prior Authorization through DHHS or its Authorized Agent must be given prior to the start of all services. Utilization Review will be conducted by DHHS or its Authorized Agent.

28.08-2 **Staff Requirements**

**A. Qualification Requirements for Direct Care Staff**

1. **Direct care staff** must meet the following minimum requirements:

- Be at least 18 years of age;
- Have a high school diploma or equivalent;
- All direct care staff must obtain a Behavioral Health Professional (BHP) certification within one (1) year of hire.  
OR

2. **Grandfathering:** Staff who are employed at the time this rule goes into effect as direct care professionals in Day Habilitation Services for Persons with Mental Retardation, Chapter II, Section 24 are considered qualified to provide this service and must complete BHP certification within one (1) year of the effective date of this rule. Any staff working in the capacity of a BHP must become BHP certified no later than September 28, 2011;

3. **Provisional Approval of Providers**

Staff must begin receiving the Behavioral Health Professional training within thirty (30) days from the date of hire. The provisional candidate must complete the training and obtain certification within one (1) year from the date of hire.

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**28.08 POLICIES AND PROCEDURES** (continued)

Approvals must be maintained in the agency's personnel file and the length of provisional status documented in the employee's file. Provisional candidates who have not completed certification requirements within one (1) year from the date of hire are not eligible to perform reimbursable services with any provider until certification is complete.

AND

4. **Supervision of direct care staff:**

Provider agencies must identify qualified professional supervisors for each direct care position. Direct care staff employed full time must be supervised a minimum of four (4) hours per month. Direct care staff employed part time must receive a prorated amount of supervision, with a minimum requirement of one hour per month.

B. **Requirements for Supervisors of Direct Care Staff**

Supervisors of direct care staff must meet the following professional qualifications:

1. **Grandfathering:** Staff who are employed at the time this rule goes into effect as a Supervisor to direct care professional in "Day Habilitation Services for Persons with Mental Retardation", Chapter II, Section 24; or
2. Have a Bachelor's degree in a human services or related field and at least (two) 2 years related experience; or
3. Have a Master's degree in a human services or related field and at least (one) 1 year of related experience; or
4. Be a licensed social worker (LSW) with at least (one) 1 year of related experience; or
5. Be a licensed social worker (LSW) who has attained a related Master's degree; or
6. Be a licensed professional counselor (LPC), licensed clinical professional counselor (LCPC), licensed clinical professional

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28.08 **POLICIES AND PROCEDURES** (continued)

counselor conditional clinical (LCPC-CC), licensed clinical social worker (LCSW), Licensed Masters Social Worker conditional (LMSW-C), a Board Certified Behavior Analyst (BCBA), psychologist, physician, or advanced practice registered nurse; or

7. Be a registered professional nurse with 3 years related experience.

C. **Requirements for Behavioral Health Professional providing Specialized Services**

1. **Grandfathering:** Staff who have met training, experience and supervision requirements set forth in Section 28.08-2.A. and 28.08-8-2.B as of the effective date of these rules and as approved by the Department are grandfathered Behavioral Health Professionals with Specialized Services.

2. Behavioral Health Professional providing Specialized Services must meet all of the certification requirements as stated for the

Certification as Behavioral Health Professional or equivalent as determined by the Department and must:

- a. Be under the Supervision of a Licensed Psychologist, Board Certified Behavior Analyst or equivalent as determined by the Department, and
- b. Be able to demonstrate specific competencies required to provide Specialized Services including but not limited to the basic principles of behavior; and
- c. Be able to apply, under the direction of the supervisor, an array of procedures specific to Specialized Services.

3. **Supervision of Behavior Health Professional with Specialized Services Endorsement**

- a. Behavioral Health Professionals with Specialized Services Endorsement employed full time must be supervised a minimum of four (4) hours per month. Behavioral Health Professionals with Specialized Services employed part time must receive a prorated

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28.08 **POLICIES AND PROCEDURES** (continued)

amount of supervision, with a minimum requirement of one (1) hour per month.

**\*The Department is seeking, and anticipates receiving, approval from CMS for this Section. Pending approval, these changes will be effective.**

D. **\*Requirements for Board Certified Behavioral Analyst (BCBA)**

Effective  
6/25/2019

BCBAs provide the supervision and oversight of Specialized Services to assure fidelity to the evidence-based model. The following requirements apply to BCBAs:

1. The individual must be an independent practitioner who is certified as a graduate level BCBA by the Behavioral Analyst Certification Board;
2. a Licensed Psychologist.

28.08-3 **Program Integrity**

The Program Integrity Unit monitors MaineCare reimbursed treatment services provided and determines the appropriateness and necessity of the services, including duplication of services. All Program Integrity requirements apply as defined in the *MaineCare Benefits Manual*, Chapter I, “General Administrative Policies and Procedures” for more detail.

28.09 **BILLING**

The documentation must demonstrate only one staff person's time is billed for any specific activity provided to the member. Billing must be accomplished in accordance with the Department's “Billing Instructions for Services for Children with Cognitive Impairments and Functional Limitations” provided by the MaineCare Services, Division of Customer Service:

( [http://www.maine.gov/dhhs/oms/providerfiles/billing\\_instructions.html](http://www.maine.gov/dhhs/oms/providerfiles/billing_instructions.html) )

28.10 **REIMBURSEMENT**

28.10-1 **Rates.** Reimbursement is specified in the *MaineCare Benefits Manual*, Chapter<sup>o</sup>III, Section 28.

28.10-2 **Reimbursement Allowances.** In accordance with Chapter I of the *MaineCare Benefits Manual*, it is the responsibility of the provider to seek payment from

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28.10 **REIMBURSEMENT** (continued)

every other source that is available for payment of a rendered service before billing MaineCare.

MaineCare will pay the lowest of the following:

- A. The fee established by MaineCare;
- B. The lowest payment allowed by Medicare; or
- C. The provider's usual and customary charge.